# National Labor Relations Board Weekly Summary of NLRB Cases

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*T-West Sales and Service, Inc. d/b/a Desert Toyota* (28-CA-19447, 19524; 346 NLRB No. 1) Las Vegas, NV Dec 23, 2005. Pursuant to its decisions in *Desert Toyota*, 346 NLRB No. 3 (2005) (*Desert Toyota I*) and *Desert Toyota*, 346 NLRB No. 4 (2005) (*Desert Toyota II*), the Board reversed the administrative law judge and dismissed the complaint allegation that the Respondent, among other things, violated Section 8(a)(5) and (1) of the Act by failing to bargain in good faith, failing to provide requested information, and failing to notify and bargain with Machinists Local 845 about disciplinary action taken with respect to two employees. In the absence of exceptions, the Board approved the judge's dismissal of the remaining allegations that the Respondent violated Section 8(a)(3), (4), and (1) when it suspended employees Clayton Lamoya and suspended and discharged employee Thomas Pranske. [HTML] [PDF]

In *Desert Toyota I* Chairman Battista and Member Schaumber found that the Respondent did not have an obligation to bargain with the Union as the exclusive collective-bargaining representative of its employees and reversed the judge's recommendation that a *Gissel (NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)) bargaining order issue. Member Liebman dissented from the denial of a bargaining order in *Desert Toyota I*, but agreed that the Board majority's decision there is dispositive here.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Machinists Local 845; complaint alleged violation of Section 8(a)(1), (3), (4), and (5). Hearing at Las Vegas, Oct. 5-7, 2004. Adm. Law Judge Albert A. Metz issued his decision March 25, 2005.

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*T-West Sales and Service, Inc. d/b/a Desert Toyota* (28-CA-20207; 346 NLRB No. 2) Las Vegas, NV Dec. 23, 2005. The Board adopted the recommendation of the administrative law judge and dismissed the complaint allegation that the Respondent violated Section 8(a)(5) and (1) of the Act when it refused to provide information on various dates between November 2004 and March 2005 and when it unilaterally changed the matching contributions for employees enrolled in its 401(k) plan. [HTML] [PDF]

In light of the Board's reversal of the bargaining order recommended in *Desert Toyota*, 346 NLRB No. 3 (2005) (*Desert Toyota I*), it found that the Respondent did not have an obligation to bargain with Machinists Local 845 as the exclusive collective-bargaining representative of its employees. Member Liebman dissented from the denial of a bargaining order *in Desert Toyota I*, but agreed that the Board majority's decision there is dispositive in this case.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Machinists Local 845; complaint alleged violation of Section 8(a)(1) and (5). Hearing at Las Vegas on June 29, 2005. Adm. Law Judge William G. Kocol issued his decision Aug. 24, 2005.

*T-West Sales & Service, Inc. d/b/a Desert Toyota* (22-CA-17904, 18065; 346 NLRB No. 3) (*Desert Toyota I*) Las Vegas, NV Dec. 23, 2005. The Board agreed with the administrative law judge that the Respondent violated Section 8(a)(1) when it: (1) maintained an overly broad no-solicitation rule; (2) coercively interrogated the service advisors, who worked with the technicians, solicited them to report on others' union activities, and created an impression of surveillance; (3) coercively interrogated, solicited grievances from, and impliedly promised benefits to service technician Jorge Galindo; and (4) coercively interrogated service technician Thomas Pranske twice and made statements to Pranske linking Galindo's discharge to his support of Machinists Local 744. It also found that the Respondent violated Section 8(a)(3) and (1) when it discharged Galindo. [HTML] [PDF]

Unlike the judge, Chairman Battista and Member Schaumber found that the coercive effects of the Respondent's unlawful conduct can be alleviated by the use of the Board's traditional remedies and, therefore, reversed the judge's recommendation that a *Gissel (NLRB v. Gissel Packing Co.*, 395 U.S. 575 (1969)) bargaining order issue. Contrary to her colleagues, Member Liebman indicated in a footnote that she would find a *Gissel* bargaining order warranted in this case. In her view, the Respondent had committed hallmark violations, not only unlawfully discharging the primary union activist, Galindo, but also indirectly threatening another employee whom it questioned about Galindo's union involvement.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Machinists 744; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Las Vegas, Sept. 10-11, 2002. Adm. Law Judge Lana Parke issued her decision Nov. 13, 2002.

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*T-West Sales & Service, Inc. d/b/a Desert Toyota* (28-CA-18478, et al.; 346 NLRB No. 4) (*Desert Toyota II*) Las Vegas, NV Dec. 23, 2005. The Board adopted the administrative law judge's finding that the Respondent violated Section 8(a)(1) of the Act by threatening employees about discussing union activity. While the judge found that the Respondent violated Section 8(a)(1), (3), (4), and (5), the Board reversed most of the judge's findings of violations pursuant to its decision in *Desert Toyota*, 346 NLRB No. 3 (2005) (*Desert Toyota I*). Among others, Chairman Battista and Member Schaumber reversed the complaint allegation that the Respondent violated Section 8(a)(5) and (1) by refusing to provide the requested information and by refusing to bargain with Machinists Local 845 and violated Section 8(a)(3), (4), and (1) by disciplining Thomas Panske. [HTML] [PDF]

Chairman Battista and Member Schaumber adopted, in the absence of exceptions, the judge's dismissal of: (a) the allegation that the Respondent violated Section 8(a)(5) and (1) by unilaterally changing terms and conditions of employment relating to employees' mopping their work areas, to the assignment of extended warranty work, and to employees use of the

timeclock; (b) the allegation that the Respondent violated Section 8(a)(4), (3), and (1) by disciplining Thomas Pranske on January 24, 2003; (c) the allegations that the Respondent

violated Section 8(a)(3) and (1) by disciplining Charles Frankhouse on December 5, 2002, January 28 and April 24, 2003, threatening and discharging Frankhouse on February 25, 2003, imposing restrictions upon Frankhouse on April 17, 2003, and terminating Frankhouse's employment on or about May 8, 2003; and (d) the allegations that the Respondent violated Section 8(a)(3) and (1) by "diminishing work opportunities for union supporters" and by "reduc[ing] the flag or flat rate hours earned by employees who had signed cards with the Union." Member Liebman dissented in part. Contrary to her colleagues, Member Liebman agreed with the judge that the second discipline received by Thomas Pranske, arising from his angry response to the first unlawful discipline, was a continuation of the discrimination action taken against him, and also was unlawful. For the reasons set forth in her dissenting footnote in *Desert Toyota I*, Member Liebman would find that the Respondent violated Section 8(a)(5) and (1) of the Act by refusing to bargain with the Union and by refusing to provide the Union with information concerning unit employees and by unilaterally implementing new work rules.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Machinists Local 845; complaint alleged violation of Section 8(a)(1), (3), (4), and (5). Hearing at Las Vegas, July 1-2 and 17, 2003. Adm. Law Judge Albert A. Metz issued his decision Dec. 3, 2003.

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Dura Art Stone, Inc. and Amalgamated Industrial Workers Local 61 (31-CA-26009, 31-CB-11160; 346 NLRB No. 14) Fontana, CA Dec. 23, 2005. The Board affirmed the administrative law judge's finding that by negotiating and executing a collective-bargaining agreement covering the employees in the appropriate unit which included a union security clause and dues check-off provision, at a time when Respondent Local 61 no longer represented a majority of such employees, Respondent Dura Art Stone violated Section 8(a)(1), (2), and (3) of the Act and Respondent Local 61 violated Section 8(b)(1)(A) and 8(b)(2) of the Act. [HTML] [PDF]

(Chairman Battista and Members Liebman and Schaumber participated.)

Charges filed by Electrical, Radio and Machine Workers Local 1421; complaint alleged violation of Section 8(a)(1), (2), and (3) and Section 8(b)(1)(A) and 8(b)(2). Hearing at Los Angeles on May 19, 2003. Adm. Law Judge William L. Schmidt issued his decision July 31, 2003.

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*Dynasteel Corp.* (26-CA-20558; 346 NLRB No. 12) Millington, TN and Iuka, MS Dec. 19, 2005. The Board adopted certain of the administrative law judge's recommendations and found that the Respondent violated Section 8(a)(3) and (1) of the Act by threatening its employees;

engaging in surveillance of its employees' union activities; interrogating them concerning their union sympathies or the union sympathies of their coworkers; instructing employees to commit unfair labor practices or threatening them with discipline if they refuse to commit unfair labor practices; disciplining, discharging, or otherwise discriminating against its employees in retaliation for their union or other protected activities; and failing or refusing to hire or consider applicants for hire because of their union affiliation or its belief or suspicion that they may engage in union activities once they are hire. [HTML] [PDF]

Chairman Battista and Member Schaumber reversed the judge and concluded that the Respondent's discipline of Tim Barnes did not violate Section 8(a)(3). They found no evidence was presented that Barnes engaged in any union activity prior to his discipline and disagreed with dissenting Member Liebman's assertion that their finding that the Respondent unlawfully compelled maintenance employee Edy Goss to sign the disciplinary warning against Barnes necessities a finding that the discipline was unlawful. Member Liebman would find that Barnes was unlawfully disciplined, stating: "Barnes' discipline was issued (as was Vaughn's) solely because the Respondent compelled Goss to issue these disciplines. She added that the majority rightly acknowledges that Goss was unlawfully compelled to sign disciplinary warnings against Barnes and Vaughn and in her view that conclusion necessarily establishes that the warning was unlawful.

The Board reversed the judge's finding that Respondent's General Counsel and Human Resources Director Jack Melvin's failure to disavow remarks by the Respondent's secretary, Glenna Basham, violated Section 8(a)(1). While the judge determined that Basham was not a supervisor or agent of Respondent, he nevertheless found that Melvin's failure to disavow Basham's statements that Vaughn and Goss would not be returned to work due to their union "stickers" violated Section 8(a)(1).

Member Schaumber would remand the following issues to the judge for an explanation of his credulity resolutions in determining whether the Respondent violated Section 8(a)(1): (1) whether Plant Manager Mark Jones threatened Goss during the summer of 2001; (2) whether Jones and Supervisor Bill Sanders threatened employees in Sept. 2001; (3) whether Shop Foreman Glen Adcock threatened employees in Sept. 2001; (4) whether Jones threatened employees in Sept. 2001; and (6) whether Jones interrogated Goss in Oct. 2001 following his discharge. While the judge summarily credited testimony regarding these issues without explaining why he discredited the Respondent's witnesses, Member Schaumber found that the judge's credibility resolution lack sufficient detail to provide an adequate basis for review.

(Chairman Battista and Members Liebman and Schaumber participated.)

Charge filed by Boilermakers; complaint alleged violation of Section 8(a)(1) and (3). Hearing at Cornith, MS, Oct. 15-17, 2002. Adm. Law Judge Lawrence W. Cullen issued his decision May 14, 2003.

### LIST OF DECISIONS OF ADMINISTRATIVE LAW JUDGES

Iron Mountain, Inc. d/b/a Iron Mountain Records Management (Teamsters Local 728) Atlanta, GA Dec. 19, 2005. 10-CA-35793; JD(ATL)-53-05, Judge Lawrence W. Cullen.

*Akal Corp.* (Government Security Officers Local 53) Denver, CO Dec. 21, 2005. 27-CA-19482; JD(SF)-81-05, Judge Albert A. Metz.

Allied Aviation Fueling of Dallas, LP (Transport Workers Local 513) Dallas, TX Dec. 21, 2005. 16-CA-24267, 24288; JD(ATL)-54-05, Judge William N. Cates.

Consolidated Bus Transit, Inc. and Lonero Bus Transit, Inc. (Teamsters) Brooklyn, NY Dec. 21, 2005. 2-CA-36492; JD(NY)-54-05, Judge Eleanor MacDonald.

*E.I. Dupont de Nemours and Co.* (Steelworkers Local 4-786) Edge Moor, DE Dec. 23, 2005. 4-CA-33620; JD-93.05, Judge Paul Bogas.

*Nestle Purina Petcare Co.* (Food & Commercial Workers District 271) Crete, NE Dec. 23, 2005. 17-CA-22997; JD(SF)-82-05, Judge William L. Schmidt.

Cellco Partnership d/b/a Verizon Wireless (Communications Workers) Orangeburg, NY Dec. 23, 2005. 2-CA-35987; JD(NY)-55-05, Judge Steven Davis.

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# LIST OF UNPUBLISHED BOARD DECISIONS AND ORDERS IN REPRESENTATION CASES

(In the following cases, the Board considered exceptions to and adopted Reports of Regional Directors or Hearing Officers)

## DECISION AND ORDER [overruling certain of Employer's objections]

*Agri Processor Co., Inc.*, Brooklyn, NY, 29-RC-11242, Dec. 21, 2005 (Chairman Battista and Members Liebman and Schaumber)

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(In the following cases, the Board denied requests for review of Decisions and Directions of Elections (D&DE) and Decisions and Orders (D&O) of Regional Directors)

Jacobson & Co., Inc., Elizabeth, NJ, 29-RC-11262, Dec. 21, 2005 (Chairman Battista and Members Liebman and Schaumber)

*Chef Solutions, Inc.*, Wheeling, IL, 13-RC-21411, Dec. 22, 2005 (Chairman Battista and Members Liebman and Schaumber)

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